

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: PETITION OF US LEC
TENNESSEE, INC. FOR DECLARATORY
ORDER

)
)
) DOCKET NO. 02-00890

T.R.A. DOCKET ROOM

**FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUEST FOR ADMISSIONS OF AIRSTREAM WIRELESS
SERVICES TO US LEC OF TENNESSEE, INC.**

Pursuant to the Rules of the Tennessee Regulatory Authority Division of Practice and Procedure and Rules 33, 34 and 36 of the Tennessee Rules of Civil Procedure, Airstream Wireless Services ("Airstream") requests that US LEC of Tennessee, Inc. ("US LEC") answer under oath the following Interrogatories, Requests for Production and Requests for Admission ("Discovery Requests") and that such answers be served upon the undersigned attorneys in compliance with the Scheduling Order entered by the TRA. After so answering the following Discovery Requests, should further information called for therein become known to US LEC, it is requested to promptly transmit such further information by supplementing its answers to these Discovery Requests to the undersigned attorneys.

DEFINITIONS & INSTRUCTIONS

- a. As used herein, the word "person(s)" means all individuals and entities, including, but without limiting the generality of the foregoing, individuals, sole proprietorships, associations, companies, partnerships, joint ventures, corporations, trusts, estates, authorities and government or municipal entities.
- b. As used herein, "or" means "and/or."

c. "You" or "your" as used herein is intended to include US LEC and its agents, present and former employees, its legal counsel, partners, co-venturers, predecessors and successors, and all other persons or entities acting on behalf of US LEC.

d. The term "documents" is used in its customary broad sense to include, by way of illustration only and not by way of limitation, the following items, including originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, whether printed or reproduced by any process, or written and/or produced by hand, namely: books of account, journals, ledgers, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, interoffice and intra-office communications, notations of any sort of conversations, e-mails, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefax, invoices, work sheets, all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, video tapes, recordings, and motion pictures), and any electronic, mechanical, or electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, recordings, and computer memories).

e. As used herein, "identify" when used with respect to a person or persons means:

- (1) state the name, address(es), and telephone number(s) of such person;
- (2) note the name of the present employer or employers and job title, if any, of each such person; and

(3) if such person was affiliated at any time with US LEC of Tennessee, Inc., by employment or otherwise, state the nature (including job title, if any), and dates of such affiliation.

f. As used herein, "identify" when used with respect to a document, documents, or written communication means:

(1) specify the nature of the document (e.g., letters, memoranda, press release, written agreements, telegrams, etc.);

(2) state the date, if any, appearing on the document when it was prepared;

(3) identify each person who wrote, signed, dictated, or otherwise participated in the preparation of the document;

(4) identify each person, if any, who was an addressee thereof;

(5) if it now exists, identify each person having custody of the document;

(6) state when and how it came to be in your possession or subject to your control; and

(7) state the substance of the information contained in the document or communication. If such document was, but no longer is, in your possession or subject to your control, state what disposition was made of it.

g. Any document bearing on any sheet or side thereof, any marks, including by way of illustration only and not by way of limitation, initials, stamped indicia, comments or notations, of any character and not a part of the original text or any reproduction thereof, is to be considered a separate document for purposes of the following Requests for Production of Documents.

h. These Discovery Requests are made as continuing Requests. If any answer or document responsive to these Discovery Requests come into the possession, custody or control of US LEC or of its officers, directors, employees, agents or representatives, including attorneys, at any time prior to the hearing or trial of this matter, such document should be promptly produced.

i. Copies of any documents previously produced need not be reproduced.

j. With respect to any document that is called for by the Requests for Production and that is withheld upon a claim of privilege or immunity, state for each such document:

(1) the Request for Production to which the document is otherwise responsive;

(2) its title or description and general subject matter;

(3) its date;

(4) its author;

(5) the person for whom it was prepared or to whom it was sent;

(6) the identity of every person who has seen the document; and

(7) the nature of the privilege or immunity claim.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all persons known to US LEC or persons acting on behalf of or under the direction of US LEC who are likely to have discoverable information that US LEC may use to support its claims or defenses in this action, and please identify the subjects of that information.

RESPONSE:

INTERROGATORY NO. 2: Please identify every person whom US LEC intends to call as an expert witness at either the TRA hearing or a trial in this matter, and for each person so identified, please state completely and in detail:

- (a) The subject matter on which the expert is expected to testify;
- (b) The substance of the facts and opinions to which the expert is expected to testify; and,
- (c) A summary of the grounds for each opinion.

RESPONSE:

INTERROGATORY NO. 3: Please identify each and every person whom US LEC expects to testify at a TRA hearing or trial in this matter.

RESPONSE:

INTERROGATORY NO. 4: Please identify the alleged fraudulent scheme or fraudulent activity allegedly undertaken by Airstream which resulted in US LEC terminating service to Airstream on or about July 24, 2002.

RESPONSE:

INTERROGATORY NO. 5: Please identify all persons and/or US LEC representatives who determined that Airstream was utilizing US LEC's network for an alleged fraudulent scheme or purpose resulting in the termination of Airstream's service on or about July 24, 2002.

RESPONSE:

INTERROGATORY NO. 6: Please identify the date when all such persons identified in US LEC's Response to Interrogatory No. 5 determined that Airstream was using US

LEC's network for an alleged fraudulent purpose or scheme and the date when the decision to terminate Airstream's service was made by US LEC.

RESPONSE:

INTERROGATORY NO. 7: Please identify all documents relied on by such persons identified in US LEC's Response to Interrogatory No. 5 when such persons determined that Airstream was using US LEC's network for an alleged fraudulent scheme or purpose.

RESPONSE:

INTERROGATORY NO. 8: Please identify the major telecommunications company whose fraud division contacted US LEC about the alleged unusual nature of traffic coming from Airstream.

RESPONSE:

INTERROGATORY NO. 9: Identify US LEC's basis for its statement that based on normal calling patterns, approximately 10% of all long distance calls are made to wireless telephones.

RESPONSE:

INTERROGATORY NO. 10: Please identify all telecommunications companies, long distance carriers, international long distance carriers or other persons that have billed or charged US LEC any amount as a result of Airstream's use of US LEC's network.

RESPONSE:

REQUESTS FOR PRODUCTION

REQUEST NO. 1. Please produce all contracts and drafts of all contracts entered into between Airstream and US LEC.

RESPONSE:

REQUEST NO. 2. Please produce all documents containing US LEC's guidelines, procedures or standards relating to or governing contracts for the sale of international minutes since January 2002 to the present.

RESPONSE:

REQUEST NO. 3. For any witness retained or specifically employed to provide expert testimony on behalf of US LEC, please produce the following:

- (a) Copies of any reports, documents or notes containing a complete statement of all opinions to be expressed by each such witness;
- (b) Copies of the data or information considered by each such witness in forming each opinion;
- (c) Copies of any exhibits used as a summary of or support for the opinions of each such witness;
- (d) Copies of the qualifications of each such witness;
- (e) A list of all publications authored by each such witness within the preceding ten years;
- (f) Copies of all documents setting forth the compensation to be paid to each such witness; and
- (g) A listing of any other cases in which such witness has testified as an expert at trial or by deposition within the preceding four years.

RESPONSE:

REQUEST NO. 4. Please produce all documents relied upon by US LEC when negotiating and prior to executing the contract at issue with Airstream.

RESPONSE:

REQUEST NO. 5. Please produce a copy of US LEC's contract with MCI or any other telecommunications company, long distance carrier, international long distance carrier or person that has charged or billed US LEC any amount for any activity attributed to Airstream.

RESPONSE:

REQUEST NO. 6. Please produce all documents, specifically correspondence, between any person and US LEC regarding Airstream's alleged unusual or abnormal traffic patterns.

RESPONSE:

REQUEST NO. 7. Please produce all of US LEC's internal documents regarding Airstream, excluding any documents protected by applicable privilege.

RESPONSE:

REQUEST NO. 8. Please produce all documents exchanged between US LEC and Airstream and any of its agents or employees.

RESPONSE:

REQUEST NO. 9. Please produce a copy of all tariff(s) that US LEC alleges control(s) this dispute.

RESPONSE:

REQUEST NO. 10. Please produce all documents upon which US LEC relies upon for its assertion that based upon normal calling patterns, approximately 10% of all long distance calls are made to wireless telephones.

RESPONSE:

REQUEST NO. 11: Please produce all documents that support US LEC's allegation that Airstream was deliberately manipulating its traffic in furtherance of an alleged fraudulent scheme or purpose.

RESPONSE:

REQUEST NO. 12: Please produce all bills generated by US LEC and sent to Airstream.

RESPONSE:

REQUEST NO. 13: Please produce all documents that evidence all payments, including any deposits, received by US LEC from Airstream.

RESPONSE:

REQUEST NO. 14: Please produce all telephone records, including a list of all numbers to which calls were terminated to a wireless telephones, relating to Airstream's use of US LEC's network.

RESPONSE:

REQUEST NO. 15: Please produce all invoices, bills or any other documents received by US LEC from any other person which reflect charges incurred by US LEC for services US LEC provided to Airstream.

RESPONSE:

REQUEST NO. 16: Please produce all documents evidencing payment of such invoices or bills referred to in US LEC's Response to Request No. 15.

RESPONSE:

REQUESTS FOR ADMISSION

REQUEST NO. 1: Admit that nothing in the terms of the written agreement, including all tariffs and all other attachments incorporated into the agreement, entered into between Airstream and US LEC discerns or distinguishes between the cost for calls terminated to land line telephones as opposed to calls terminated to wireless telephones.

RESPONSE:

REQUEST NO. 2: Admit that after terminating service to Airstream, representatives of US LEC attempted to renegotiate the terms, specifically the cost to terminate calls to wireless telephones, with Airstream.

RESPONSE:

REQUEST NO. 3: Admit that US LEC has no proof or evidence that Airstream was involved, in any way, in any alleged fraudulent activity or fraudulent scheme.

RESPONSE:

Respectfully submitted,

Clinton J. Simpson by BMC (#18134)
CLINTON J. SIMPSON (#20284)
THOMAS F. BARNETT (#21380) *by permission*
Attorneys for Respondent
Airstream Wireless Services

OF COUNSEL:

BAKER, DONELSON, BEARMAN,
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CERTIFICATE OF SERVICE

I, Clinton J. Simpson, hereby certify that I have served a true and exact copy of this Memorandum of Airstream via U.S. mail, postage prepaid, and facsimile on Henry Walker, Esq., Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, P. O. Box 198062, Nashville, Tennessee, 37219, this the 17th day of July, 2003.

Clinton J. Simpson by BMC by
CLINTON J. SIMPSON permission
(#18134)